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BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			PASS, NATALIE	
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			3626	

DATE MAILED: 02/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/524,189

Applicant(s)

KRUTTER ET AL.

Examiner

Natalie A. Pass

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 17 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Notice to Applicant

1. This communication is in response to the amendment filed 17 November 2005. Claims 1-2, 12, 15, 17 and 20 have been amended. Claims 1-20 remain pending.

Claim Objections

2. Claim 1 is objected to because of the following informalities:

The claim listing in the amendment of 17 November 2005 does not accurately match the previous claim listing. The text of any added or deleted subject matter must be shown by properly marking the added or deleted text. Examiner notes that, for example, in claim 1 at line 8 the words "by the computer" appear to be deleted subject matter to claim 1, as they have been recited in the previous claim recitation, however the lack of deletion markings makes this unclear.

Specifically, amendments to the claims filed on or after July 30, 2003 must comply with 37 CFR 1.121(c) which states:

(c) *Claims*. Amendments to a claim must be made by rewriting the entire claim with all changes (*e.g.*, additions and deletions) as indicated in this subsection, except when the claim is being canceled. Each amendment document that includes a change to an existing claim, cancellation of an existing claim or addition of a new claim, must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in the application. The claim listing, including the text of the claims, in the amendment document will serve to replace all prior versions of the claims, in the application. In the claim listing, the status of every claim must be indicated after its claim number by using one of the following identifiers in a parenthetical expression: (Original), (Currently amended), (Canceled), (Withdrawn), (Previously presented), (New), and (Not entered).

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(1) *Claim listing.* All of the claims presented in a claim listing shall be presented in ascending numerical order. Consecutive claims having the same status of “canceled” or “not entered” may be aggregated into one statement (e.g., Claims 1–5 (canceled)). The claim listing shall commence on a separate sheet of the amendment document and the sheet(s) that contain the text of any part of the claims shall not contain any other part of the amendment.

(2) *When claim text with markings is required.* All claims being currently amended in an amendment paper shall be presented in the claim listing, indicate a status of “currently amended,” and be submitted with markings to indicate the changes that have been made relative to the immediate prior version of the claims. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. Only claims having the status of “currently amended,” or “withdrawn” if also being amended, shall include markings. If a withdrawn claim is currently amended, its status in the claim listing may be identified as “withdrawn—currently amended.”

(3) *When claim text in clean version is required.* The text of all pending claims not being currently amended shall be presented in the claim listing in clean version, i.e., without any markings in the presentation of text. The presentation of a clean version of any claim having the status of “original,” “withdrawn” or “previously presented” will constitute an assertion that it has not been changed relative to the immediate prior version, except to omit markings that may have been present in the immediate prior version of the claims of the status of “withdrawn” or “previously presented.” Any claim added by amendment must be indicated with the status of “new” and presented in clean version, i.e., without any underlining.

(4) *When claim text shall not be presented; canceling a claim.*

(i) No claim text shall be presented for any claim in the claim listing with the status of “canceled” or “not entered.”

(ii) Cancellation of a claim shall be effected by an instruction to cancel a particular claim number. Identifying the status of a claim in the claim listing as “canceled” will constitute an instruction to cancel the claim.

(5) *Reinstatement of previously canceled claim.* A claim which was previously canceled may be reinstated only by adding the claim as a “new” claim with a new claim number.

Appropriate correction is required.

Specification

3. The objection to the specification under 35 U.S.C. §132 because it introduced new matter is hereby withdrawn due to the amendment filed 17 November 2005.

Claim Rejections - 35 USC § 112

4. The rejection of claims 1-2, 3, 12-15, 17, and 20 under 35 U.S.C. §112, first paragraph for introducing new matter is hereby withdrawn due to the amendment filed 17 November 2005.

5. The following is a quotation of the second paragraph of 35 U.S.C. §112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 1 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(A) Claim 1 recites the limitation “allowed claims” in lines 11-12. It is unclear what is meant by this limitation, as “allowed claims” has not previously been calculated or defined in the claim language.

(B) Claim 1 recites the limitation “the percentage” in line 12. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over King et al., U.S. Patent Number 5, 704, 045 in view of Schwab, S., "Reinsurer Liability For Contingent Claims," The International Journal Of Insurance Law 1997, Vol 4, pp 28-39; 175-178, hereinafter known as Schwab and Hall, R., "Alternatives to Estimation of Claims and Acceleration of Reinsurance Recoverables: The Uniform Receivership Law," (1999), URL: <<http://www.robertmhall.com/articles/k.htm>>, hereinafter known as Hall, for substantially the same reasons given in the previous Office Action (paper number 04262005). Further reasons appear hereinbelow.

(A) Claim 1 has been amended to include the recitation of

- ♦ "a fraction of allowed claims, the percentage being a function of said values" in lines 11-12.

As per newly amended claim 1, King Schwab and Hall teach a method further comprising:

wherein said payment (reads on "dividend") is a fraction of allowed claims, the percentage being a function of said values (Hall; page 1, paragraph 8, 10, 11, page 2, paragraph

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1); Examiner interprets Hall's teachings of "Some of the assets and liabilities of the estate may be transferred to a liquidating trust for ... [...] ... claims" (Hall; page 1, paragraph 8) as teaching a form of a fraction of allowed claims.

The motivations for combining the respective teachings of King, Schwab, and Hall are as given in the rejection of claim 1 in the prior Office Action (paper number 04262005) and incorporated herein.

The remainder of claim 1 is rejected for the same reasons given in the prior Office Action (paper number 04262005, section 10, pages 5-8), and incorporated herein.

(B) Claim 2 has been amended to include the recitation of "discounted" in line 4.

As per newly amended claim 2, King Schwab and Hall teach a method further comprising:

determining the expected present value of the reinsurer's obligations discounted by a discount factor (reads on "reinsurer risk factor") (Hall; page 1, paragraphs 2, 8, 10, 11, page 2, paragraph 1).

The motivations for combining the respective teachings of King Schwab and Hall are as given in the rejection of claim 1 in the prior Office Action (paper number 04262005) and incorporated herein.

The remainder of claim 2 is rejected for the same reasons given in the prior Office Action (paper number 04262005, section 10, pages 8-9), and incorporated herein.

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(C) Claim 3 has not been amended and is rejected for the same reasons given in the previous Office Action (paper number 04262005, section 10, pages 8-9), and incorporated herein.

9. Claims 4-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over King et al., U.S. Patent Number 5, 704, 045 in view of Schwab, S., "Reinsurer Liability For Contingent Claims," The International Journal Of Insurance Law 1997, Vol 4, pp 28-39; 175-178, hereinafter known as Schwab, and further in view of Hammond et al., U.S. Patent Number 5, 712, 984 for substantially the same reasons given in the previous Office Action (paper number 04262005). Further reasons appear hereinbelow.

(A) Claims 4-9 have not been amended and are rejected for the same reasons given in the previous Office Action (paper number 04262005, section 11, pages 9-13), and incorporated herein.

10. Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hammond et al., U.S. Patent Number 5, 712, 984 in view of King et al., U.S. Patent Number 5, 704, 045 for substantially the same reasons given in the previous Office Action (paper number 04262005). Further reasons appear hereinbelow.

(A) Claims 10-11 have not been amended and are rejected for the same reasons given in the previous Office Action (paper number 04262005, section 12, pages 13-17), and incorporated herein.

11. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over King et al., U.S. Patent Number 5, 704, 045 in view of Schwab, S., "Reinsurer Liability For Contingent Claims," The International Journal Of Insurance Law 1997, Vol 4, pp 28-39; 175-178, hereinafter known as Schwab, and Hall, R., "Alternatives to Estimation of Claims and Acceleration of Reinsurance Recoverables: The Uniform Receivership Law," (1999), URL:<<http://www.robertmhall.com/articles/k.htm>>, hereinafter known as Hall, and Jenkins, T. "Risk in the Insurance Sector," (1999), URL: <http://www.apra.gov.au/RePEc/RePEcDocs/Archive/conference_papers1/risk_insurance_sector.pdf>, hereinafter known as Jenkins, for substantially the same reasons given in the previous Office Action (paper number 04262005). Further reasons appear hereinbelow.

(A) As per the amendments to claim 12, these appear to have been made merely to correct minor typographical or grammatical errors, and to change dependencies. While these changes render the language of the claims smoother and more consistent, they otherwise affect neither the scope and breadth of the claims as originally presented nor the manner in which the claims were interpreted by the Examiner when applying prior art within the previous Office Action. As such, the recited claimed features are rejected for the same reasons given in the prior Office Action (paper number 04262005, section 13, pages 17-19), and incorporated herein.

(B) Claims 13-14 have not been amended and are rejected for the same reasons given in the previous Office Action (paper number 04262005, section 13, pages 17-19), and incorporated herein

(C) Claim 15 has been amended to include the recitation of

- ♦ "expected recovery from" in line 5; and
- ♦ "corresponding to the statistical average of the multiple scenarios" in line 6.

As per newly amended claim 15, King, Schwab, Hall, and Jenkins teach a method further comprising:

determining a net present value of the expected recovery from reinsurers' obligations corresponding to the statistical average of the multiple scenarios (King; column 8, lines 19-32, column 10, lines 33-36, column 20, line 64 to column 21, line 14), (Schwab; see at least page 176, lines 5-44), (Jenkins; page 68, column 1, line 10 to column 2, line 8); Examiner interprets Jenkins teachings of "scenario testing" together with "an actuary's analysis" and "modelling process" and "life [insurance] companies have integrated actuaries into the organisation" (Jenkins; page 68, column 1, line 10 to column 2, line 8) as teaching a form of actuarial analysis to provide the statistical average of the multiple scenarios.

The motivations for combining the respective teachings of King, Schwab, and Hall and Jenkins are as given in the rejection of claim 12 in the prior Office Action (paper number 04262005) and incorporated herein.

The remainder of claim 15 is rejected for the same reasons given in the prior Office Action (paper number 04262005, section 13, pages 18-19), and incorporated herein.

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12. Claims 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over King et al., U.S. Patent Number 5, 704, 045 in view of Schwab, S., "Reinsurer Liability For Contingent Claims," The International Journal Of Insurance Law 1997, Vol 4, pp 28-39; 175-178, hereinafter known as Schwab, and Hammond et al., U.S. Patent Number 5, 712, 984 and Jenkins, T. "Risk in the Insurance Sector," (1999), URL: <http://www.apra.gov.au/RePEc/RePEcDocs/Archive/conference_papers1/risk_insurance_sector.pdf>, hereinafter known as Jenkins for substantially the same reasons given in the previous Office Action (paper number 04262005). Further reasons appear hereinbelow.

(A) Claims 16, 18-19 have not been amended and are rejected for the same reasons given in the previous Office Action (paper number 04262005, section 14, pages 19-21), and incorporated herein

(B) Claims 17 and 20 have been amended to include the recitation of

- ♦ "expected recovery from" in lines 5-6 and 7, respectively; and
- ♦ "corresponding to the statistical average of the multiple scenarios" in lines 6-7 and 8-9, respectively.

As per newly amended claims 17 and 20, King, Schwab, Hammond, and Jenkins teach a method further comprising:

determining a net present value of the expected recovery from reinsurers' obligations corresponding to the statistical average of the multiple scenarios (King; column 8, lines 19-32, column 10, lines 33-36, column 20, line 64 to column 21, line 14), (Schwab; see at least page 176, lines 5-44), (Jenkins; page 68, column 1, line 10 to column 2, line 8); Examiner interprets

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Jenkins teachings of “scenario testing” together with “an actuary’s analysis” and “modelling process” and “life [insurance] companies have integrated actuaries into the organisation” (Jenkins; page 68, column 1, line 10 to column 2, line 8) as teaching a form of actuarial analysis to provide the statistical average of the multiple scenarios.

The motivations for combining the respective teachings of King, Schwab, Hammond and Jenkins are as given in the rejection of claim 16 in the prior Office Action (paper number 04262005) and incorporated herein.

The remainder of claims 17 and 20 is rejected for the same reasons given in the prior Office Action (paper number 04262005, section 14, pages 19-21), and incorporated herein.

Response to Arguments

13. Applicant's arguments filed 17 November 2005 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the response filed 17 November 2005.

(A) At page 8 of the 17 November 2005 response, Applicant argues that the amendment of 17 November 2005 overcame the objections and rejections under 35 U.S.C. 132 and 35 U.S.C. 112, respectively. Examiner agrees and has withdrawn these objections and rejections.

(A) At pages 9-13 of the 17 November 2005 response, Applicant argues that the claim limitations in the 17 November 2005 response are not taught or suggested by the applied

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references. In response, all of the limitations which Applicant disputes are missing in the applied references have been fully addressed by the Examiner as either being fully disclosed or obvious in view of the collective teachings of King, Schwab, Hall, Hammond, and Jenkins, based on the logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention, as detailed in the 35 USC § 103 rejections given in the preceding sections of the present Office Action and in the prior Office Action (paper number 04262005), and incorporated herein. In particular, Examiner notes that the limitations of "guaranteeing the payment of the fixed dividend to claimants or insureds of the insolvent Insurance Company when said allowed claims mature" are taught by the combination of cited references. In particular, Examiner interprets Schwab's recitation of "to estimate the value of ... [...] ... losses ... to participate in the final distribution of assets" (emphasis added) (Schwab; see at least page 176, lines 38-39) as teaching a form of "guaranteeing the payment ... [...] ...when said allowed claims mature."

At pages 9-11 of the 17 November 2005 response, Applicant argues that the limitations of claim 1 are not taught or suggested by the applied references. In response, all of the limitations which Applicant disputes are missing in the applied references, including the newly amended limitations, have been fully addressed by the Examiner as either being fully disclosed or obvious in view of the teachings of King, Schwab, Hall, Hammond and Jenkins, based on the logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention, as detailed in the 35 USC § 103 rejections given in the preceding sections of the

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present Office Action and in the prior Office Action (paper number 04262005), and incorporated herein.

With respect to Applicant's argument at the paragraph bridging pages 9-10 of the 17 November 2005 response that "[i]n contrast to Schwab, claim 1 recites guaranteeing the payment when the claims mature, that is the contingent claims are not paid a dividend early as in Schwab, but the claims are paid late only after the ... claims ... mature" Examiner respectfully disagrees, noting that Schwab teaches "to participate in the final distribution of assets" (emphasis added) (Schwab; see at least page 176, lines 38-39), Examiner notes that the word "final" appears to mean not "early," but rather "late," i.e. ... after the claims mature.

With respect to Applicant's argument at page 10-11 of the 17 November 2005 response that the applied references fail to disclose "guaranteeing the payment of a fixed dividend", as recited in claim 1 (b), Examiner interprets Schwab's teaching of the final dividend plan issued by the courts together with protecting the interests of claimants, abbreviating the delay in paying claimants, reducing administrative expenses and lightening the burden of insolvency as reading on this limitation (Schwab; see at least page 176, lines 5-44). In addition, it is respectfully submitted that Appellant is not the first to have invented guaranteeing the payment of a fixed dividend, and that this feature existed in the art prior to Appellant's invention, and thus would have been within the knowledge of the skilled artisan. The issue at hand is not whether the applied references specifically teaches the features (e.g., guaranteeing the payment of a fixed dividend or payment to claimants or insureds of the insolvent Insurance Company) recited by

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Appellant, *per se*, but rather, whether or not the prior art, when taken in combination with the knowledge of average skill in the art, would put the artisan in possession of the features as claimed. With regard to this issue, the courts have held that even if a patent does not specifically disclose a particular element, said element being within the knowledge of a skilled artisan, the patent taken in combination with that knowledge, would put the artisan in possession of the claimed invention. *In re Graves*, 36 USPQ 2d 1697 (Fed. Cir. 1995).

With respect to Applicant's argument at the paragraph bridging pages 12-13 of the 17 November 2005 response that the applied references fail to disclose, "indemnifying the insolvent Insurance Company against the claims at the guaranteed payment rate", as recited in claim 10, examiner interprets King's teaching of "[t]he insurer-entity is also capable of indemnifying insureds for loss on a change in value of marketable shares, agricultural products, precious metals, petroleum, fluctuations in interest or currency rates, or residual value. It could issue ICC #458 demand guarantees, similar to a letter of credit issued by a bank, or other performance or surety risk contracts; or accept any type of traditional insurance risk, as well as unique or difficult to place risks, such as catastrophe, excess or aggregate exposures, liability or contract risks, or unfunded potential exposures (pollution liability, etc.)" (King; column 9, lines 15-25) as teaching a form of indemnifying the "insureds" (reads on "Insurance Company") against the claims.

Conclusion

14. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. **Any response to this final action should be mailed to:**

Box AF

Commissioner of Patents and Trademarks
Washington D.C. 20231

or faxed to: (571) 273-8300.

For formal communications, please mark
"EXPEDITED PROCEDURE".

For informal or draft communications, please label
"PROPOSED" or "DRAFT" on the front page of the
communication and do NOT sign the communication.

After Final communications should be labeled "Box AF."

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16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalie A. Pass whose telephone number is (571) 272-6774. The examiner can normally be reached on Monday through Thursday from 9:00 AM to 6:30 PM. The examiner can also be reached on alternate Fridays.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached at (571) 272-6776. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (571) 272-3600. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Natalie A. Pass

January 26, 2006


JOSEPH THOMAS
SUPERVISORY PATENT EXAMINER